UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Miscellaneous Case No. 6:06-MC-45-Orl-19.

In Re: Rules of the United States
District Court for the
Middle District of Florida
_____/

Upon Consideration, Local Rules 1.04, 1.05, 1.07(c), 1.09, 2.01, 2.02, 2.03, 2.04(f), 3.01, 3.02, 3.03, 3.04(a), 4.12(f), 4.19(a), 4.20, 6.04, 8.01, 8.02, 8.03, 8.04, 8.05, and 8.06 shall be amended[1] as follows:

I.
1.04

RULE 1.04 SIMILAR OR SUCCESSIVE CASES; DUTY OF COUNSEL

(a) Whenever a case, once docketed and assigned, is terminated by any means and is thereafter refiled without substantial change in issues or parties, it shall be assigned, or reassigned if need be, to the judge to whom the original case was assigned. Whenever a second or subsequent case seeking post-conviction or other relief by petition for writ of habeas corpus is filed by the same petitioner involving the same conviction, it shall be assigned, or reassigned if need be, to the same judge to whom the original case was assigned. All motions under 28 U.S.C. Section 2255 shall be assigned to the judge to whom the original criminal case was assigned.

~~(b) Whenever two or more cases are pending concurrently before different judges of the Court, whether in the same or in different Divisions of the District, and the cases involve common questions of law or fact, or for other reasons their disposition entails duplication of judicial labor, the judges involved shall determine whether the most recently filed case or cases should be reassigned to the judge to whom the earliest filed case is assigned. All motions for consolidation filed by counsel pursuant to Rule 42, Fed.R.Civ.P., or Rule 13, Fed.R.Cr.P., shall be filed in each case affected thereby, but shall be considered and determined by the judge to whom the earliest filed case has been assigned. If two or more cases are consolidated, the judge to whom the earliest filed case was assigned shall be the presiding judge.~~

(b) **TRANSFER OF RELATED CASES BEFORE TWO OR MORE JUDGES.** If cases assigned to different judges are related because of either a common question of fact or any other prospective duplication in the prosecution or resolution of the cases, a party may move to transfer any related case to the judge assigned to the first-filed among the related cases. The moving party shall file a notice of filing the motion to transfer, including a copy of the motion to

[1]Underlined language is new. A line is drawn through language to be stricken from the present version of the Local Rule.

transfer, in each related case. The proposed transferor judge shall dispose of the motion to transfer but shall grant the motion only with the consent of the transferee judge. If the transferee judge determines that the same magistrate judge should preside in some or all respects in some or all of the related cases, the Clerk shall assign the magistrate judge assigned to the first-filed among the affected cases to preside in that respect in those cases.

(c) **CONSOLIDATION OF RELATED CASES BEFORE ONE JUDGE.** If cases assigned to a judge are related because of either a common question of law or fact or any other prospective duplication in the prosecution or resolution of the cases, a party may move to consolidate the cases for any or all purposes in accord with Rule 42, Fed.R.Civ.P., or Rule 13, Fed.R.Cr.P. The moving party shall file a notice of filing the motion to consolidate, including a copy of the motion to consolidate, in each related case. If the presiding judge determines that the same magistrate judge should preside in some or all respects in some or all of the consolidated cases, the Clerk shall assign the magistrate judge assigned to the first-filed among the affected cases to preside in that respect in those cases.

(d)~~(c) It shall be the continuing duty of a~~ All counsel of record in any case ~~to bring~~ have a continuing duty promptly to ~~the attention of~~ inform the Court and ~~opposing~~ counsel of the existence of any other case ~~or cases~~ within the purview of ~~subsections (a) or (b) of~~ this rule, as well as the existence of any similar or related cases or proceedings~~ then~~ pending before any other court or administrative agency. ~~Such notice shall be given~~Counsel shall notify the Court by filing and serving a "**Notice of Pendency of ~~Other~~ Related Actions**" ~~containing a list~~ that identifies and describes any related case ~~description thereof~~.

II.
1.05

RULE 1.05 FORM OF PLEADINGS; GENERAL REQUIREMENTS

(a) Although a quotation of three (3) lines or more may be single-spaced and indented and a footnote shall be single-spaced in no smaller than ten-point type, ~~A~~ all pleadings~~, motions, briefs, applications and orders~~ and other papers tendered by counsel for filing shall be typewritten, double-spaced, in at least ~~a~~ twelve-point type, and, if filed on paper, shall be on opaque, unglazed, white paper eight and one-half inches wide by eleven inches long (8 ½ x 11), with one and one-fourth inch top, bottom and left margins and a one to one and one-fourth inch right margin. Only one side of the paper may be used.

(b) All pleadings, motions, briefs, applications, and orders tendered by counsel for filing shall contain on the first page a caption as prescribed by Rule 10(a), Fed.R.Civ.P., and in addition thereto shall state in the title the name and designation of the party (as Plaintiff or Defendant or the like) in whose behalf the paper is submitted. ~~All proposed orders submitted to the Court for entry in any case shall be accompanied by stamped envelopes pre-addressed to all other counsel of record (or unrepresented parties, as the case may be).~~

(c) The first pleading filed on behalf of any party or parties represented by counsel shall be signed by at least one attorney in his individual name with the designation "**Trial Counsel**", or the equivalent. Thereafter, until seasonable notice to the contrary is filed with the Court and served upon opposing counsel, such attorney shall be the person responsible for the case with full authority, individually, to conduct all proceedings including trial.

(d) All pleadings, motions, briefs, applications, and other papers tendered by counsel for filing shall be signed personally by counsel as required by Rule 11, Fed.R.Civ.P. Immediately under every signature line, additional information shall be given as indicated in the example below:

(Signature of Counsel)_____
Typed Name of Counsel
Florida Bar Identification Number (if admitted to practice in Florida)
Firm or Business Name
Mailing Address
City, State, Zip Code
Telephone Number
Facsimile Phone Number (if available)
E-mail address

(e) The Clerk is authorized and directed to require a complete and executed AO Form JS44, Civil Cover Sheet, which shall accompany each civil case as a condition to the filing thereof. State and federal prisoners, and other persons filing civil cases *pro se* are exempt from the requirements of this subsection.

III.
1.07(c)

RULE 1.07 PREPARATION, SERVICE AND RETURN OF PROCESS; SERVICE OF PLEADINGS SUBSEQUENT TO ORIGINAL COMPLAINT

(c) Service of a pleading or paper subsequent to the original complaint may be made by transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, and the number of pages transmitted. When service is made by facsimile, a copy shall also be served by any other method permitted by Rule 5, Fed. R. Civ. P. Service by delivery after 5:00 p.m. shall be deemed to have been made on the next business day. ~~Service by facsimile constitutes a method of hand delivery for the purpose of computing the time within which any response is required.~~

RULE 1.09 (NEW) FILING UNDER SEAL

(a) Unless filing under seal is authorized by statute, rule, or order, a party seeking to file under seal any paper or other matter in any civil case shall file and serve a motion, the title of which includes the words "Motion to Seal" and which includes (i) an identification and description of each item proposed for sealing; (ii) the reason that filing each item is necessary; (iii) the reason that sealing each item is necessary; (iv) the reason that a means other than sealing is unavailable or unsatisfactory to preserve the interest advanced by the movant in support of the seal; (v) a statement of the proposed duration of the seal; and (vi) a memorandum of legal authority supporting the seal. The movant shall not file or otherwise tender to the Clerk any item proposed for sealing unless the Court has granted the motion required by this section. No settlement agreement shall be sealed absent extraordinary circumstances, such as the preservation of national security, protection of trade secrets or other valuable proprietary information, protection of especially vulnerable persons including minors or persons with disabilities, or protection of non-parties without either the opportunity or ability to protect themselves. Every order sealing any item pursuant this section shall state the particular reason the seal is required.

(b) If filing under seal is authorized by statute, rule, or order (including an order requiring or permitting a seal and obtained pursuant to (a) of this rule), a party seeking to file under seal any paper or other matter in any civil case shall file and serve a motion, the title of which includes the words "Motion to Seal Pursuant to [Statute, Rule, or Order]" and which includes (i) a citation to the statute, rule, or order authorizing the seal; (ii) an identification and description of each item submitted for sealing; (iii) a statement of the proposed duration of the seal; and (iv) a statement establishing that the items submitted for sealing are within the identified statute, rule, or order the movant cites as authorizing the seal. The movant shall submit to the Clerk along with a motion under this section each item proposed for sealing. Every order sealing any item pursuant to this section shall state the particular reason the seal is required and shall identify the statute, rule, or order authorizing the seal.

(c) Unless otherwise ordered by the Court for good cause shown, no order sealing any item pursuant to this section shall extend beyond one year, although a seal is renewable by a motion that complies with (b) of this rule, identifies the expiration of the seal, and is filed before the expiration of the seal.

(d) The Clerk shall return to the movant any matter for which sealing is denied.

V.
2.01

RULE 2.01 GENERAL ADMISSION TO PRACTICE

(d) To maintain good standing in the bar of this Court, each attorney admitted under this ~~R~~rule, beginning in the year following the year of the attorney's admission, must pay ~~an annual~~ a periodic fee set ~~from time to time~~ by ~~an~~ administrative order and, unless exempted by the Chief Judge for good cause, must register with the Clerk of the Court and maintain an e-mail address for electronic service by the Clerk during the attorney's membership in the bar of this Court. ~~Beginning in the year following the year of the attorney's admission to the bar of this Court, the fee is due annually before the first business day in July.~~ An attorney who fails to pay timely the periodic fee or fails without exemption to maintain a registered e-mail address ~~the annual fee before August 1 of each year~~ is subject to removal from membership in the bar of this Court.

VI.
2.02

RULE 2.02 SPECIAL ADMISSION TO PRACTICE

(a) Any ~~non-resident~~ attorney who is not a resident of Florida but who is a member in good standing of the bar of any District Court of the United States~~;~~ outside ~~the State of~~ Florida~~;~~ may appear specially ~~and be heard in any case in which he is~~ as counsel of record~~;~~ without formal or general admission; provided, however, such privilege is not abused by ~~frequent or regular~~ appearances in separate cases to such a degree as to constitute the maintenance of a regular practice of law in ~~the State of~~ Florida; and provided further that~~:~~

~~(1)~~ ~~W~~whenever appearing as counsel by filing any pleading or paper in any case pending in this Court, a non-resident attorney shall file within ten (10) days a written designation and consent-to-act on the part of some member of the bar of this Court, resident in Florida, upon whom all notices and papers may be served and who will be responsible for the progress of the case, including the trial in default of the non-resident attorney. In addition to filing the written designation, the non-resident attorney shall ~~pay a fee equal to the fee prescribed in~~comply with both the fee and e-mail registration requirements of Rule 2.01(d), and the written designation shall certify the non-resident attorney's ~~payment of the fee~~compliance.

(b) An attorney employed full-time by either the United States, an agency of the United States, or a public entity established under the laws of the United States may appear within the course and scope of the attorney's employment as counsel without general or other formal admission.

(c) Any attorney who appears specially in this Court pursuant to subsections (a) or (b) of this rule shall be deemed to be familiar with, and shall be governed by, these rules in general, including Rule 2.04 hereof in particular; and shall also be deemed to be familiar with and governed by the Code of Professional Responsibility and other ethical limitations or requirements then governing the professional behavior of members of The Florida Bar.

(d) In an extraordinary circumstance (such as the hearing of an emergency matter) a lawyer who is not a member of the Middle District bar may move *instanter* for temporary admission provided the lawyer appears eligible for membership in the Middle District bar and simultaneously initiates proceedings for general or special admission to the Middle District bar. Temporary admission expires in thirty days or upon determination of the application for general or special admission, whichever is earlier.

VII.
2.03

RULE 2.03 APPEARANCE AND WITHDRAWAL

(a) Every pleading or paper of any kind filed by an attorney in this Court shall conform and be subject to the requirements of Rule 11, Fed.R.Civ.P., and unless otherwise expressly stated therein, shall constitute a general appearance on behalf of the persons or parties for whom the pleading or paper is filed.

(b) No attorney, having made a general appearance under subsection (a) of this rule, shall thereafter abandon the case or proceeding in which the appearance was made, or withdraw as counsel for any party therein, except by written leave of Court obtained after giving ten (10) days' notice to the party or client affected thereby, and to opposing counsel.

(c) In all criminal cases non-payment of attorney's fees shall not be sufficient justification for seeking leave to withdraw if the withdrawal of counsel is likely to cause a continuance of a scheduled trial date; nor shall leave be given to withdraw in any other case, absent compelling ethical considerations, if such withdrawal would likely cause continuance or delay. If a party discharges an attorney it shall be the responsibility of that party to proceed *pro se* or obtain the appearance of substitute counsel in sufficient time to meet established trial dates or other regularly scheduled proceedings as the Court may direct.

(d) Any party for whom a general appearance of counsel has been made shall not thereafter take any step or be heard in the case in proper person, absent prior leave of Court; nor shall any party, having previously elected to proceed in proper person, be permitted to obtain special or intermittent appearances of counsel except upon such conditions as the Court may specify. ~~A corporation may appear and be heard only through counsel admitted to practice in the Court pursuant to Rule 2.01 or Rule 2.02.~~

(e) A corporation may appear and be heard only through counsel admitted to practice in the Court pursuant to Rule 2.01 or Rule 2.02.

VIII.
2.04(f)

RULE 2.04 DISCIPLINE

(f) It shall be the duty of every member of the bar of the Court, admitted generally under Rule 2.01 or specially under Rule 2.02, to respond to and cooperate fully with any Grievance Committee of the Court during the course of any investigation being conducted pursuant to subsection (d) of this rule; provided, however, no attorney shall be entitled as of right to notice of the pendency of any such investigation unless and until he is named in a petition to show cause filed pursuant to subsection ~~(d)~~(e)(2) of this rule.

IX.
3.01

RULE 3.01 MOTIONS; BRIEFS AND HEARINGS

(a) ~~In making any written motion or other application to the Court for the entry of an order of any kind, in civil and criminal cases (other than those made in criminal cases at Omnibus Hearings), the moving party shall file and serve with such motion or application a brief or legal memorandum with citation of authorities in support of the relief requested.~~

In a motion or other application for an order, the movant shall include a concise statement of the precise relief requested, a statement of the basis for the request, and a memorandum of legal authority in support of the request, all of which the movant shall include in a single document not more than twenty-five (25) pages.

(b) ~~Each party opposing any written motion or other application shall file and serve, within ten (10) days after being served with such motion or application, a brief or legal memorandum with citation of authorities in opposition to the relief requested. No other briefs or legal memoranda directed to any such written motion shall be filed or served by any party unless requested by the Court.~~

Each party opposing a motion or application shall file within ten (10) days after service of the motion or application a response that includes a memorandum of legal authority in opposition to the request, all of which the respondent shall include in a document not more than twenty (20) pages.

(c) ~~Absent prior permission of the Court, no party shall file any brief or legal memorandum in excess of twenty (20) pages in length.~~

No party shall file any reply or further memorandum directed to the motion or response allowed in (a) and (b) unless the Court grants leave.

~~(d) Motions and other applications will ordinarily be determined by the Court on the basis of the motion papers and briefs or legal memoranda; provided, however, the Court may allow oral argument upon the written request of any interested party or upon the Court's own motion. Requests for oral argument shall accompany the motion, or the opposing brief or legal memorandum, and shall estimate the time required for argument. All hearings on motions shall be noticed by the Clerk, as directed by the judge assigned to the case, either on regular motion days if practicable (pursuant to Rule 78, Fed.R.Civ.P.), or at such other times as the Court shall direct.~~

(d) A motion requesting leave to file either a motion in excess of twenty-five (25) pages, a response in excess of twenty (20) pages, or a reply or further memorandum shall not exceed three (3) pages, shall specify the length of the proposed filing, and shall not include, as an attachment or otherwise, the proposed motion, response, reply, or other paper.

(e) Motions of an emergency nature may be considered and determined by the Court at any time, in its discretion (see also, Rule 4.05). The unwarranted designation of a motion as an emergency motion may result in the imposition of sanctions.

(f) All applications to the Court (i) requesting relief in any form, or (ii) citing authorities or presenting argument with respect to any matter awaiting decision, shall be made in writing (except as provided in Rule 7(b) of the Federal Rules of Civil Procedure) in accordance with this rule and in appropriate form pursuant to Rule 1.05; and, unless invited or directed by the presiding judge, shall not be addressed or presented to the Court in the form of a letter or the like. All pleadings and papers to be filed shall be filed with the Clerk of the Court and not with the judge thereof, except as provided by Rule 1.03(c) of these rules.

(g) Before filing any motion in a civil case, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, or to involuntarily dismiss an action, the moving party shall confer with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion, and shall file with the motion a statement (i) certifying that the moving counsel has conferred with opposing counsel and (ii) stating whether counsel agree on the resolution of the motion. A certification to the effect that opposing counsel was unavailable for a conference before filing a motion is insufficient to satisfy the parties' obligation to confer. The moving party retains the duty to contact opposing counsel expeditiously after filing and to supplement the motion promptly with a statement certifying whether or to what extent the parties have resolved the issue(s) presented in the motion. If the interested parties agree to all or part of the relief sought in any motion, the caption of the motion shall include the word "unopposed," "agreed," or "stipulated" or otherwise succinctly inform the reader that, as to all or part of the requested relief, no opposition exists.

(h) All dispositive motions must be so designated in the caption of the motion. All dispositive motions which are not decided within one hundred and eighty (180) days of the responsive filing (or the expiration of the time allowed for its filing under the local rules) shall be brought to the attention of the district judge by the movant by filing a "Notice To the Court" within ten (10) days after the time for deciding the motion has expired. Movant shall file an additional "Notice To The Court" after the expiration of each and every additional thirty (30) day period during which the motion remains undecided. Movant shall provide the Chief Judge of the Middle District with a copy of each and every "Notice To The Court" which movant is required to file under this rule.

(i) The use of telephonic hearings and conferences is encouraged, whenever possible, particularly when counsel are located in different cities.

(j) Motions and other applications will ordinarily be determined by the Court on the basis of the motion papers and briefs or legal memoranda; provided, however, the Court may allow oral argument upon the written request of any interested party or upon the Court's own motion. Requests for oral argument shall accompany the motion, or the opposing brief or legal memorandum, and shall estimate the time required for argument. All hearings on motions shall be noticed by the Clerk, as directed by the judge assigned to the case, either on regular motion days if practicable (pursuant to Rule 78, Fed.R.Civ.P.), or at such other times as the Court shall direct.

X.
3.02

RULE 3.02 NOTICE OF DEPOSITIONS; LIMITS ON DEPOSITIONS

~~(a)~~ Unless otherwise stipulated by all interested parties pursuant to Rule 29, Fed.R.Civ.P., and excepting the circumstances governed by Rule 30(a), Fed.R.Civ.P., a party desiring to take the deposition of any person upon oral examination shall give at least ten (10) days notice in writing to every other party to the action and to the deponent (if the deponent is not a party).

~~(b) In accordance with Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A), no more than ten depositions per side may be taken in any case unless otherwise ordered by the Court.~~

XI.
3.03

RULE 3.03 WRITTEN INTERROGATORIES; FILING OF DISCOVERY MATERIAL; EXCHANGE OF DISCOVERY REQUEST BY COMPUTER DISK

~~(a) Unless otherwise permitted by the Court for cause shown, no party shall serve upon any other party, at one time or cumulatively, more than twenty-five (25) written interrogatories pursuant to Rule 33, Fed.R.Civ.P., including all parts and subparts.~~

~~(b)~~(a) Written interrogatories shall be so prepared and arranged that a blank space shall be provided after each separately numbered interrogatory. The space shall be reasonably calculated to enable the answering party to insert the answer within the space.

~~(c)~~(b) The original of the written interrogatories and a copy shall be served on the party to whom the interrogatories are directed, and copies on all other parties. No copy of the written interrogatories shall be filed with the Court by the party propounding them. The answering party shall use the original of the written interrogatories for his answers and objections, if any; and the original shall be returned to the party propounding the interrogatories with copies served upon all other parties. The interrogatories as answered or objected to shall not be filed with the Court as a matter of course, but may later be filed by any party in whole or in part if necessary to presentation and consideration of a motion to compel, a motion for summary judgment, a motion for injunctive relief, or other similar proceedings.

~~(d)~~(c) Notices of the taking of oral depositions shall not be filed with the Court as a matter of course (except as necessary to presentation and consideration of motions to compel); and transcripts of oral depositions shall not be filed unless and until requested by a party or ordered by the Court.

~~(e)~~(d) Requests for the production of documents and other things, matters disclosed pursuant to Rule 26, Fed.R.Civ.P. and requests for admission, and answers and responses thereto, shall not be filed with the Court as a matter of course but may later be filed in whole or in part if necessary to presentation and consideration of a motion to compel, a motion for summary judgment, a motion for injunctive relief, or other similar proceedings.

~~(f)~~(e) Litigants' counsel should utilize computer technology to the maximum extent possible in all phases of litigation *i.e.*, to serve interrogatories on opposing counsel with a copy of the questions on computer disk in addition to the required printed copy.

XII.
3.04(a)

RULE 3.04 MOTIONS TO COMPEL AND FOR PROTECTIVE ORDER

(a) A ~~M~~motions to compel discovery pursuant to Rule 36 or Rule 37, Fed.R.Civ.P., shall include ~~(1) quote~~ quotation in full of each interrogatory, question on deposition, request for admission, or request for production to which the motion is addressed;, ~~(2) quote~~ each of which shall be followed immediately by quotation in full of the objection and grounds therefor as stated by the opposing party; or the answer or response which is asserted to be insufficient;, ~~and (3)~~ immediately followed by a statement of the reasons the motion should be granted. The opposing party shall then respond as required by Rule 3.01(b) of these rules.

XIII.
4.12(f)

RULE 4.12 PRE-SENTENCE INVESTIGATION REPORTS; PRE-SENTENCING PROCEDURES

(f) The Court directs the probation officer not to disclose the probation officer's recommendation, if any, on the sentence, pursuant to its authority in Rule 32~~(b)(6)(A)~~(e)(3).

XIV.
4.19(a)

RULE 4.19 PROVISION OF PRETRIAL SERVICES

(a) Pretrial services within the purview of 18 U.S.C. Section 3152, *et seq*., shall be supervised and provided by the Chief Pretrial Services Officer of this Court pursuant to 18 U.S.C. Section 3152(a). Any federal officer taking or receiving custody of a defendant in the Middle District of Florida shall immediately notify the pretrial services office of such detention, the name of the defendant, the charge(s) against him, and the place in which the defendant is being detained. A pretrial services officer shall then interview the defendant as soon as practicable at his place of confinement or, if the defendant has been released, at such other places as the pretrial services office shall specify. ~~The pretrial services officer shall require each defendant to submit to urinalysis prior to the initial appearance before the judicial officer.~~

XV.
4.20

~~**RULE 4.20 COMPUTATION OF TIME**~~

~~(a) Pursuant to Fed.R.Civ.P. 6(a) and (e), whenever a period of time prescribed or allowed by the *Federal Rules of Civil Procedure* or the *Rules of the District Court of the United States for the Middle District of Florida*, or by any applicable statute is less than eleven (11) days and there has been service of a notice or other paper upon a party by mail, then the period of time which that party has to act shall be computed as follows:~~

~~(1) By first calculating the original prescribed period pursuant to Fed.R.Civ.P. 6(a); and~~

~~(2) By then adding three (3) days to the original prescribed period pursuant to Fed.R.Civ.P. 6(e). The three (3) days shall be calculated beginning with the day following the last day of the original prescribed period, and shall be counted consecutively regardless of whether any day of this three (3) day period is a Saturday, Sunday, or legal holiday as defined in Fed.R.Civ.P. 6(a). The third day shall be treated as the last day of the period unless it is a Saturday,~~

~~Sunday, or legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.~~

XVI.
6.04

~~RULE 6.04 OMNIBUS HEARINGS IN CRIMINAL CASES~~ RESERVED

~~(a) At the time of arraignment in every criminal case in which the defendant enters a plea of not guilty (other than those cases governed by Rule 6.03 of these rules), the United States Magistrate Judge shall, with the consent of the defendant and the government, schedule an Omnibus Hearing. The Omnibus Hearing shall then be conducted pursuant to the standing form of Report and Order on Omnibus Hearing Project as then in use in each Division of the Court.~~

XVII.
8.01

RULE 8.01 ~~STATEMENT OF PURPOSE; CERTIFICATION OF ARBITRATORS~~
ARBITRATION

(a) It is the purpose of the Court, through adoption and implementation of this rule, to provide an alternative mechanism for the resolution of civil disputes ~~(a Court annexed, mandatory arbitration procedure) leading to an early disposition of many civil cases with resultant savings in time and costs to the litigants and to the Court, but without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial *de novo* on demand.~~ in accord with 28 U.S.C. Sections 651-658.

(b) The Chief Judge shall certify those persons who are eligible and qualified to serve as arbitrators under this rule. ~~, in such numbers as he shall deem appropriate, and shall have complete discretion and authority to thereafter withdraw the certification of any arbitrator at any time. Separate lists of certified arbitrators shall be maintained in the Jacksonville-Ocala, Orlando, and Tampa-Ft. Myers Divisions of the Court, respectively.~~ An individual may be certified to serve as an arbitrator under this rule if admitted to The Florida Bar for at least five (5) years, admitted to practice before this Court, and determined by the Chief Judge competent to perform the duties of an arbitrator.

~~(c) An individual may be certified to serve as an arbitrator under this rule if:~~

~~(1) He has been for at least five years a member of The Florida Bar;~~

~~(2) He is admitted to practice before this Court; and~~

~~(3) He is determined by the Chief Judge to be competent to perform the duties of an arbitrator.~~

An advisory committee or committees comprised of members of the bar in each Division of the Court, respectively, may be constituted to assist the Chief Judge in screening applicants and aiding in the formulation and application of standards for selecting arbitrators.

~~(d)~~(c) Each individual certified as an arbitrator shall take the oath or affirmation prescribed by 28 U.S.C. Section 453 before serving as an arbitrator. ~~Current lists of all persons certified as arbitrators in each Division of the Court, respectively, shall be maintained in the office of the Clerk as a public document.~~ Depending upon the availability of funds from the Administrative Office of the United States Courts, or other appropriate agency, arbitrators ~~shall~~may be compensated for their services in such amounts and in such manner as the Chief Judge shall specify from time to time. ~~by standing order; and n~~No arbitrator shall charge or accept for ~~his~~ services any fee or reimbursement from any other source. ~~whatever absent written approval of the Court given in advance of any such payment.~~ Any member of the bar who is certified and designated as an arbitrator pursuant to these rules shall not for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court.

XVIII.
8.02

RULE 8.02 ~~DEFINITION OF~~ CASES ~~TO BE ARBITRATED~~ FOR ARBITRATION

(a) Any civil action ~~shall~~may be referred ~~by the Clerk~~ to arbitration in accordance with this rule if the parties consent in writing to arbitration, except that referral to arbitration may not occur if:

(1) the action is based on an alleged violation of a right secured by the Constitution of the United States;

(2) jurisdiction is based in whole or in part on 28 U.S.C. Section 1343; or

(3) the relief sought consists of money damages in an amount greater than $150,000.

~~(1) The United States is a party; and~~

~~(A) The action is of a type that the Attorney General has provided by regulation may be submitted to arbitration; or~~

~~(B) The action consists of a claim for money damages not in excess of $150,000, exclusive of interest and costs (and the Court determines in its discretion that any non-monetary claims are insubstantial), and is brought pursuant to the Miller Act, 40 U.S.C. Section 270(a) *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. Sections 1346(b) and 2671 *et seq.*~~

~~(C) The action is not based on an alleged violation of a right secured by the Constitution of the United States, and jurisdiction is not based in whole or in part on 28 U.S.C. Section 1343.~~

~~(2) The United States is not a party; and~~

~~(A) The action consists of a claim or claims for money damages not in excess of $150,000, individually, exclusive of punitive damages, interest, costs and attorneys fees (and the Court determines in its discretion that any non-monetary claims are insubstantial), and is brought pursuant to~~

~~(i) 28 U.S.C. Section 1331 and the Jones Act, 46 U.S.C. Section 688, or the FELA, 45 U.S.C. Section 51;~~

~~(ii) 28 U.S.C. Sections 1331 or 1332 arising out of a negotiable instrument or a contract; or~~

~~(iii) 28 U.S.C. Sections 1332 or 1333 and Rule 9(h), Fed.R.Civ.P., to recover for personal injuries or property damage.~~

~~(B) The action is not based on an alleged violation of a right secured by the Constitution of the United States, and jurisdiction is not based in whole or in part on 28 U.S.C. Section 1343.~~

~~(3) The parties consent to arbitration as provided in this rule with respect to any case not within the provisions of subsections (a)(1) and (2) above, and agree to pay a reasonable fee to the arbitrator(s). The written consent to arbitration shall include a statement of understanding that~~

~~(A) Consent to arbitration is freely and knowingly obtained; and~~

~~(B)~~

(b) No party or attorney can be prejudiced for refusing to participate in arbitration by consent.

~~(4) For the purpose of making a determination concerning the dollar amount of unstated or unliquidated claims incident to the application of subsection (a) of this Rule, claims for damages shall be presumed in all cases to be less than $150,000 exclusive of punitive damages, interest, costs and attorneys fees, unless counsel asserting the claim certifies in writing before the case is referred by the Clerk for arbitration that to the best of his knowledge and beliefs, in good faith, the damages recoverable exceed $150,000 exclusive of punitive damages, interest, costs and attorneys fees.~~

(5) Notwithstanding the amount alleged or stated in a party's pleading relating to liquidated claims, and despite a party's good faith certification concerning the amount recoverable with regard to unliquidated claims, the Court may in any appropriate case at any time disregard such allegation or such certificate and require arbitration if satisfied that recoverable damages do not in fact exceed $150,000 exclusive of punitive damages, interest, costs and attorney's fees, or that arbitration may promote prompt and just disposition of the cause. Conversely, any civil action subject to arbitration pursuant to this rule may be exempt or withdrawn from arbitration by the presiding Judge at any time, before or after reference, upon a determination for any reason that the case is not suitable for arbitration.

(b) Mediation may be substituted for arbitration by the presiding Judge in any civil action subject to arbitration pursuant to this rule upon a determination for any reason that the case is susceptible to resolution through mediation.

XIX.
8.03

RULE 8.03 REFERRAL TO ARBITRATION

(a) In any civil action subject to arbitration pursuant to Rule 8.02, the Clerk shall notify the parties within twenty (20) days after the case is at issue that the action is being referred to arbitration in accordance with these rules. Within twenty (20) days thereafter referral to arbitration, by written notice to the Clerk, the parties maythe Court shall select by agreement not more than three (3) certified arbitrators to conduct the arbitration proceedings. Upon the expiration of such twenty (20) day period and in the absence of timely notice of such agreement, the Clerk shall promptly select at random a panel of three certified arbitrators to whom the case will be referred for arbitration, one of whom will be designated at random as chairman of the panel. Not more than one member or associate of a firm or association of attorneys shall be appointed to the same panel of arbitrators.

(b) Any person selected as an arbitrator may be disqualified for bias or prejudice as provided in 28 U.S.C. Section 144, and shall disqualify himself in any action in which he would be required to do so if he were a justice, judge, or magistrate judge governed by 28 U.S.C. Section 455.

XX.
8.04

RULE 8.04 ARBITRATION HEARING

(a) Immediately upon selection and designation of the arbitrators pursuant to Rule 8.03, the Clerk shall communicate with the parties and the arbitrators in an effort to ascertain a mutually convenient date for a hearing, and shall then schedule and give notice of the date and

time of the arbitration hearing which ~~shall~~may be held in space ~~to be~~ provided in the United States Courthouse. The hearing shall be scheduled within ninety (90) days from the date of the selection and designation of the arbitrators on at least twenty (20) days notice to the parties. Any continuance of the hearing beyond that ninety (90) day period may be allowed only by order of the Court for good cause shown.

~~(b) The arbitration hearing may proceed in the absence of a party who, after due notice, fails to be present; but an award of damages shall not be based solely upon the absence of a party.~~

~~(c)~~(b) At least ten (10) days prior to the arbitration hearing each party shall furnish to every other party a list of witnesses, if any, and copies (or photographs) of all exhibits to be offered at the hearing. The arbitrators may refuse to consider any witness or exhibit which has not been so disclosed.

~~(d)~~(c) Individual parties or authorized representatives of corporate parties shall attend the arbitration hearing unless excused in advance by the arbitrators for good cause shown. The hearing shall be conducted informally; the Federal Rules of Evidence shall be a guide, but shall not be binding. It is contemplated by the Court that the presentation of testimony shall be kept to a minimum, and that cases shall be presented to the arbitrators primarily through the statements and arguments of counsel.

~~(e)~~(d) Any party may have a recording and transcript made of the arbitration hearing at ~~his~~the party's expense.

XXI.
8.05

RULE 8.05 ARBITRATION AWARD AND JUDGMENT

(a) The award of the arbitrators shall be filed with the Clerk within ten (10) days following the hearing, and the Clerk shall give immediate notice to the parties. The award shall state the result reached by the arbitrators without necessity of factual findings or legal conclusions. A majority determination shall control the award. ~~The amount of the award, if any, shall not be limited to the sum stated in Rule 8.02 if the arbitrators determine that an award in excess of that amount is just and is in keeping with the evidence and the law.~~

(b) At the end of thirty (30) days after the filing of the arbitrator's award the Clerk shall enter judgment on the award if no timely demand for trial *de novo* has been made, ~~pursuant to Rule 8.06.~~ If the parties have previously stipulated in writing that the award shall be final and binding, the Clerk shall enter judgment on the award when filed.

(c) Pursuant to 28 U.S.C. Section 657(b), the~~The~~ contents of any arbitration award shall be sealed and shall remain unknown ~~not be made known~~ to any judge ~~who might be~~ assigned to the case --

(1) Except as necessary for the Court to determine whether to assess costs or attorney fees under 28 U.S.C. Section 655; or

(2) Until the District Court has entered final judgment in the action or the action has been otherwise terminated; or at which time the award shall be unsealed.

~~(3) Except for purposes of preparing the report required by Section 903b of the Judicial Improvements and Access to Justice Act.~~

XXII.
8.06

RULE 8.06 TRIAL DE NOVO

(a) Within thirty (30) days after the filing of the arbitration award with the Clerk, any party may demand a trial *de novo* in the District Court. Written notification of such a demand shall be filed with the Clerk and a copy shall be served by the moving party upon all other parties. ~~Unless permitted by the Court to proceed *in forma pauperis*, the party demanding trial *de novo*, other than the United States or its agencies or officers, shall deposit with the Clerk an amount equal to the cost of the Arbitrators' fees.~~

(b) Upon a demand for a trial *de novo* the action shall be placed on the calendar of the Court and treated for all purposes as if it had not been referred to arbitration, and any right of trial by jury shall be preserved inviolate.

(c) At the trial *de novo* the Court shall not admit evidence that there has been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Federal Rules of Evidence or the Federal Rules of Civil Procedure.

~~(d) If the party who demands a trial *de novo* fails to obtain a judgment in the District Court which is more favorable to him than the arbitration award, exclusive of interest and costs, that party shall be assessed the amount of the arbitration fees and the deposit made with the demand for trial *de novo* shall be transferred to the Treasury of the United States. If the judgment is more favorable, or if the case is disposed of before the trial *de novo* is conducted, such deposit shall be returned to the party who made it. The Court may order a return of the deposited sum to the party demanding trial *de novo* if it determines that the demand was made for good cause.~~

~~(e)~~(d) No penalty for demanding a trial *de novo*~~, other than that provided in these rules,~~ shall be assessed by the Court.

Pursuant to Fed.R.Civ.P. 83, Fed.R.Cr.P. 57, and 28 U.S.C. § 2071, the Clerk is directed to give public notice and an opportunity for comment concerning these prospective amendments. The amendments shall take effect May 31, 2006, unless sooner modified or withdrawn by subsequent Order of the Court entered after consideration of any comments received pursuant to the public notice.

DONE AND ORDERED this 9th day of May, 2006.

Patricia C. Fawsett
Chief United States District Judge

cc. All Middle District Judicial Officers
Sheryl Loesch, Clerk of Court
Jessica Lyublanovits, Chief Deputy Operations